

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

**DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR SOUNDVIEW  
HOME LOAN TRUST 2006-OPT5, ASSET-  
BACKED CERTIFICATES, SERIES 2006-  
OPT5,**

**CASE No. 1:19-cv-00554**

**Plaintiff**

**v.**

**DAVID W. WAGNER; UNITED STATES OF  
AMERICA, acting by and through its  
DEPARTMENT OF THE TREASURY  
(INTERNAL REVENUE SERVICE); THE  
STATE OF RHODE ISLAND acting by and  
through its DEPARTMENT OF  
ADMINISTRATION (DIVISION OF  
TAXATION); AMERICAN EXPRESS  
COMPANY; AND ERIC HASSMAN,**

**Defendants**

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**COMPLAINT TO FORECLOSE MORTGAGE**

**I.**

**INTRODUCTION**

Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5 files this complaint to foreclose a certain mortgage given by David W. Wagner, encumbering the real estate and improvements located at 55 Downing Street, East Greenwich, Rhode Island. The Defendant-Mortgagor defaulted on his obligation to make monthly payments under the mortgage and note which it secures, and Plaintiff now seeks to judicially foreclose the mortgage pursuant to R.I. Gen Laws §34-27-1 and §34-27-3.2(d)(5).

## II.

### PARTIES

1. Plaintiff, Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5, is a national bank charged and organized under the laws of the United States of America with a principal place of business located at 1761 East Saint Andrew, Santa Ana, CA 92705.

2. Defendant, David W. Wagner, is an individual who, upon information and belief, resides at 55 Downing Street, East Greenwich, RI 02818.

3. Defendant, United States of America, acting by and through its Department of the Treasury (Internal Revenue Service) is a governmental bureau, with a principal place of business located at 1111 Constitution Avenue NW, Washington, DC 20224.

4. Defendant, The State of Rhode Island acting by and through its Department of Administration (Division of Taxation) is a governmental bureau, with a principal place of business located at One Capitol Hill, Providence, RI 02908.

5. Defendant, American Express Company is a New York corporation with a principal place of business located at 200 Vesey Street, New York, NY 10285.

6. Defendant, Eric Hassman is an individual, with an address of 2115 Bohicket Way, Piedmont, SC 29673.

## III.

### JURISDICTION AND VENUE

7. The Court has original jurisdiction over this action involving Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5's right, title and interest in the subject property pursuant

to 28 U.S.C. § 1332(a)(1) since there is complete diversity between the Plaintiff and the Defendants and the amount in controversy is more than \$75,000.00 in that the outstanding balance due and owing on the mortgage which Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5 (“Deutsche Bank”) now seeks to foreclose exceeds \$724,500.00.

8. Venue is proper under 28 U.S.C. § 1391(b)(2) since the real property that is the subject of this Complaint is situated in Rhode Island.

#### IV.

#### FACTS

9. David W. Wagner (“Defendant-Mortgagor”), acquired title to the real estate and improvements known as 55 Downing Street, East Greenwich, Rhode Island (the “Property”) by Quitclaim Deed dated September 27, 2002 and recorded with the Town of East Greenwich Land Evidence Records (the “LER”) on September 27, 2002 in Book 497, Page 27 and by Warranty Deed dated September 27, 2002 and recorded with the LER on September 27, 2002 in Book 497, Page 36.

10. Defendant-Mortgagor secured a mortgage loan from Option One Mortgage Corporation on May 25, 2006 (the “Loan”).

11. This mortgage loan is evidenced by an Adjustable Rate Note in the original principal amount of \$724,500.00 dated May 25, 2006, given by Defendant-Mortgagor to Option One Mortgage Corporation (the “Note”). The Note contains an indorsement in blank by Option One Mortgage Corporation, rendering the note enforceable by the party that is in possession of the original Note. A true and accurate copy of the Note is attached hereto as Exhibit 1.

12. The Note is secured by a mortgage given by Defendant-Mortgagor to Option One Mortgage Corporation encumbering the Property in the original principal amount of \$724,500.00 dated May 25, 2006, and recorded with the LER on May 31, 2006, in Book 834, Page 173 (the “Mortgage”). A certified copy of the Mortgage is attached hereto as Exhibit 2.<sup>1</sup>

13. Sand Canyon Corporation f/k/a Option One Mortgage Corporation, its successors and assigns, assigned the Mortgage to Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5 by assignment dated September 5, 2012 and recorded with the LER on October 10, 2012 in Book 1173 at Page 148. A certified copy of said Assignment is attached hereto as Exhibit 3.

14. Title to the Property is encumbered by a Notice of Federal Tax Lien in favor of the Defendant, United States of America, acting by and through its Department of the Treasury (Internal Revenue Service) in the original principal amount of \$43,291.10 dated May 4, 2010 and recorded with the LER on May 11, 2010 in Book 1040, Page 257.

15. Title to the Property is further encumbered by a Notice of Federal Tax Lien in favor of the Defendant United States of America, acting by and through its Department of the Treasury (Internal Revenue Service) in the original principal amount of \$139,550.00 dated May 4, 2010 and recorded with the LER on May 11, 2010 in Book 1040, Page 258.

16. Title to the Property is further encumbered by a Federal tax lien held by Defendant United States of America, acting by and through its Department of the Treasury (Internal Revenue Service) in the original principal amount of \$161,873.88 dated July 10, 2012 and recorded with the LER on July 16, 2012 in Book 1158, Page 323.

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<sup>1</sup> As pleadings are filed electronically, the exhibits referred to herein are copies of certified documents and the loan number has been redacted for the borrower’s protection. Undersigned counsel is prepared to produce the original certified documents for the Court’s inspection upon request.

17. Title to the Property is further encumbered by a Notice of Federal Tax Lien in favor of the Defendant United States of America, acting by and through its Department of the Treasury (Internal Revenue Service) against David W. Wagner and Carol Wagner in the original principal amount of \$103,437.98 dated December 14, 2012 and recorded with the LER on December 26, 2012 in Book 1186, Page 244.

18. Title to the Property is further encumbered by a renewal of Notice of Tax Lien in favor of the Defendant, The State of Rhode Island acting by and through its Department of Administration (Division of Taxation) dated December 17, 2013 and recorded with the LER on December 23, 2013 in Book 1238, Page 937.

19. Title to the Property is further encumbered by an Execution in favor of American Express Company in the original principal amount of \$58,494.73 dated January 10, 2014 and recorded with the LER on February 24, 2014 in Book 1242, Page 248.

20. Title to the Property is further encumbered by a Notice of Tax Lien in favor of the Defendant, The State of Rhode Island acting by and through its Department of Administration (Division of Taxation) dated May 20, 2014 and recorded with the LER on May 23, 2014 in Book 1250, Page 93.

21. Title to the Property is further encumbered by an Execution in favor of Eric Hassman in the original principal amount of \$131,119.89 dated May 25, 2017 and recorded with the LER on June 7, 2017 in Book 1366, Page 66.

22. Title to the Property is further encumbered by a refiled Notice of Federal Tax Lien in favor of the Defendant United States of America, acting by and through its Department of the Treasury (Internal Revenue Service) in the original principal amount of \$40,937.07 dated April 17, 2018 and recorded with the LER on April 24, 2018 in Book 1396, Page 184.

23. Title to the Property is further encumbered by a Notice of Tax Lien in favor of the Defendant, The State of Rhode Island acting by and through its Department of Administration (Division of Taxation) dated May 15, 2018 and recorded with the LER on May 21, 2018 in Book Book 1399, Page 249.

24. The Defendant, David W. Wagner, filed Chapter 7 Bankruptcy on January 7, 2018. Upon Motion for Relief from Stay filed by Plaintiff, an Order Granting Relief from Stay was entered on March 7, 2018. A true and accurate copy of said Order is attached hereto as Exhibit 4.

25. Under the terms of the Note and the Mortgage, David W. Wagner was obligated to make monthly principal and interest payments together with a monthly escrow payment as computed by the mortgagee sufficient to pay real estate taxes and hazard insurance premiums in connection with the Property through the June 1, 2036 maturity date of the Loan.

26. Pursuant to the terms of the Mortgage, Ocwen Loan Servicing, LLC, as servicer for Deutsche Bank, sent Notices of Default dated November 3, 2016 to the Defendant-Mortgagor via first class mail at the Property address. True and accurate copies of said Notices are attached hereto as Exhibit 5.

27. The default set forth in the November 3, 2016 Notice of Default was never cured. The mortgage account with PHH Mortgage Corporation ("PHH"), as servicer of the Loan for Deutsche Bank, is now due for the October 1, 2016 payment together with all subsequently accrued but unpaid installments. A true and accurate copy of the payment history maintained by PHH in connection with the subject mortgage loan is attached hereto as Exhibit 6.

28. On September 13, 2019, Plaintiff, through its attorneys Korde & Associates, P.C., sent Notice of Acceleration to the Defendant-Mortgagor via certified and first class mail at the

Property address in addition to a Post Office Box mailing address. True and accurate copies of said Notices are attached hereto as Exhibit 7.

## **COUNT I**

### **FOR DECLARATORY JUDGMENT**

29. Deutsche Bank re-alleges and incorporates by reference herein the allegations contained in paragraphs 1-29 above.

30. Deutsche Bank seeks a judgment from this Court declaring that (a) Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5, is the holder of the Note and holder of the Mortgage and is the entity entitled to enforce the default remedies provided for in the Note and Mortgage, including exercise of the power of sale provided for therein (see paragraph 21 of the Mortgage) and (b) that the obligations set forth in the Note and Mortgage are in default.

## **COUNT II**

### **FOR DECREE BARRING ALL RIGHTS OF REDEMPTION AND VESTING TITLE IN THE PLAINTIFF FREE OF ALL CLAIMS**

31. Deutsche Bank re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-29 above.

32. Deutsche Bank seeks a decree of this Court pursuant to R.I. Gen. Laws § 34-27-1 (a) forever barring any rights of redemption which each of the Defendants may have under the terms of the Mortgage and (b) vesting title to the Property in favor of the Plaintiff, Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5, free of any and all right, title, interest or claim of each of the Defendants to this action.

### **COUNT III**

#### **FOR AN ORDER OF SALE**

33. Deutsche Bank re-alleges and incorporates by reference the allegations contained in paragraphs 1-29 above.

34. In the alternative to the relief sought in Count II hereof, Deutsche Bank seeks an order of this Court pursuant to R.I. Gen. Laws §34-27-1 or otherwise authorizing and directing Deutsche Bank to sell the property at public sale or by such other means and subject to such terms and conditions as the Court should direct with such sale culminating in a deed or order vesting title in the successful purchaser free of all rights of redemption on the part of each of the Defendants and otherwise free of any and all other rights, title, interests or claims of each of the Defendants to this action. In relation thereto, Deutsche Bank further seeks an order allowing it to credit bid up to the amount of the total debt owed to it under the Note and Mortgage at any such public sale.

WHEREFORE, Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5 (“Plaintiff”) requests that the Court:

(a) Given the equitable nature of a proceeding brought pursuant to R.I. Gen. Laws §34-27-1 the Plaintiff prays that in the event the Defendant-Mortgagor should appear in this action at any time prior to entry of a default against him, the Court enter an order staying proceedings in the case for a period of sixty (60) days to afford the Defendant-Mortgagor an opportunity to submit a completed application for loss mitigation to the Plaintiff and for the Plaintiff, in turn, to render a determination of the Defendant-Mortgagor's eligibility (or lack thereof) for any available foreclosure alternatives based on such application unless such



Defendant should affirmatively declare in a pleading or other document filed with the Court that he does not wish to submit such an application;

(b) If Defendant-Mortgagor fails to file an answer or other responsive pleading to this Complaint or otherwise fails to file a statement or other pleading with this Court at any time prior to the Plaintiff's motion for entry of final judgment expressing an interest in participating in mediation as ordered or facilitated by this Court, declare in said judgment that Defendant-Mortgagor was provided with a full and fair opportunity to mediate as an alternative means of resolving this case;

(c) Issue a decree determining that the Defendant-Mortgagor is in default of his obligations under the terms of the Note and Mortgage;

(d) Issue a decree determining that the Plaintiff, Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5, is the present holder of the Note and the present holder of the Mortgage and entitled to enforce the default remedies provided for therein;

(e) Issue a decree forever barring each of the Defendant's exercise of any rights of redemption, if any, provided for in the Mortgage and/or by operation of law and vesting title to the Property in the Plaintiff, Deutsche Bank, free of any and all right, title, interest or claim of each of the Defendants or any other person or entity who records a lien or interest in the Property after Plaintiff records a Lis Pendens identifying the within action with the East Greenwich Land Evidence Records;

(f) In the alternative to the relief sought in the preceding paragraph (e), issue an order authorizing and directing the Plaintiff to sell the Property at public sale or by such other means as the Court should direct with such sale culminating in a deed or order vesting title in the

successful purchaser free of all rights of redemption on the part of each of the Defendants and otherwise free of any and all other rights, title, interest or claim of each of the Defendants to this action or any other person or entity who records a lien or interest in the Property after Plaintiff records a Lis Pendens identifying the within action with the East Greenwich Land Evidence Records;

(g) In conjunction with the order of sale requested in the foregoing prayer for relief, provide in the judgment that the foreclosure sale referenced in the preceding paragraph and Plaintiff's delivery of a foreclosure deed to the successful high bidder at such sale shall extinguish all right, title, interest, lien, mortgage or claim in or to the Property of each of the Defendants to this action and of any other person or entity who records a lien or interest in the Property after Plaintiff records a Lis Pendens identifying the within action with the East Greenwich Land Evidence Records except that if the public sale generates a surplus over and above the total debt owed to the Plaintiff as of the date of such sale, the right, title, interest, lien, mortgage or claim of such junior interest holders shall extend and transfer to such surplus according to lien priorities established under applicable law;

(h) Authorize the Plaintiff to credit bid up to the amount of the total debt owed to it under the Note and Mortgage at any such public sale; and

(i) Grant such other and further relief as the Court deems just and proper.

Dated: October 18, 2019

Respectfully submitted,  
Deutsche Bank National Trust Company, as Trustee  
for Soundview Home Loan Trust 2006-OPT5,  
Asset-Backed Certificates, Series 2006-OPT5  
By its attorney,

/s/ Eileen C. O'Shaughnessy  
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